Quid Novi

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McGill Law

Winter

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In This Issue...

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Contributions should preferably be submitted as a .doc attachment. All anonymous submissions will be rejected.

Editor's Note...

This week's proposed legislative changes allowi exports of low-cost Canadian-made generic drugs developing countries offer a glimpse of hope in t battle against public health pandemics raging agai much of the World including AIDS.

The WHO's AIDS figures are staggering. 42 millio people are living with HIV, of these 5 million are ne cases this year. Sub-Saharan Africa is disproportio ately hit with close to 30 million HIV cases, 3.5 mi lion new this year. That's close to 75% of HIV cas for 11% of the World's population.

The government is proposing amendments to th *Patent Act* as well as the *Food and Drugs Act* i response to the WTO Doha Development Agenda. adopted these would permit less fortunate countrie better access to drugs that are presently excessivel priced. HIV treatments that here cost between 8-1 thousand USD would cost around 250$ in less fortu nate countries.

The proposed changes would be a first in the devel oped world.

One wonders why the pharmaceutical industry coul not by itself develop an effective method of assurin poorer countries access to such needed medicatio Years of lobbying by governments and activists hav influenced companies to lower the cost of treatmer for patients in poorer countries. However, the averag cost for the designer drug treatment in Africa is stil over 2000$ USD, almost *ten times* the price of wha Ottawa is proposing.

Social responsibility has never rimed with capitalism but the (non)response of pharmaceuticals to the AID epidemic clearly shows the importance of govern ment intervention in the matter. Let's just hope th influential pharmaceutical lobby and the new govern ment won't serve as pretexts to dump this audaciou legislation.

More information on the proposed amendments ca be found at
http://www.dfait-maeci.gc.ca/

On a lighter note, here's a suggestion to enliver gloomy November evenings. The OSM offers sam day rush tickets for only 10$ with proof of student id Not only will you dramatically lower the average ag of audience members, but you will also get to hea one of the top orchestras. Check out the schedule a www.osm.ca

Bonne semaine!

Patrick

Note: You will find on page 3 of this issue our firs feature, by Carl Dholandas. We plan on regularl appointing contributors to cover events and news a the Faculty. So students, staff, profs beware! We we come your comments or suggestions quid.law@mcgill.ca.

FEATURE

The Dean's Speech

by Carl Dholandas (*Quid Novi*)

On Wednesday, November 5, 2003, the new Dean of the Faculty of Law, Nicholas Kasirer, made his first "public" address. The well-attended speech, held in the Moot Court, was a terrific opportunity for students to come to understand Prof. Kasirer's overall approach to the study and teaching of law in general, and to the McGill Trans-Systemic programme in specific.

Not all of us have yet had the opportunity to be taught by Kasirer in the course of our studies at the Faculty, so a bit of an introduction may be in order despite the fact that the new dean's reputation does - if you would excuse the expression - precede him. A professor at the Faculty since 1989, Nicholas Kasirer was, until his appointment as dean, the director of the Director of the Québec Research Centre for Private and Comparative Law. He has co-edited a recent annotated *Code Civil du Québec* that many students across the province are currently using. Prof. Kasirer is an alumnus of our faculty of law, and also studied at the University of Paris and clerked for the late Justice Beetz of the Supreme Court.

Proclaiming himself an unlikely champion for the cause of Trans-Systemia, the Dean recounted the tale of his own process of learning the law. When he began his studies at the Faculty, under the former National Programme, students would embark on the study of either the civil law or the common law first and only later would they even have the opportunity to take courses from each tradition concurrently.

As all students would discern, there is a substantial difference between that system of studying law and that of the Integrated Programme, which was introduced in 1999. Under the old system, there was, Kasirer's comments suggest, a substantial gap between the study of the common law tradition and the civil law tradition. There was one Faculty of Law, but there were perhaps two ways of studying the law at McGill, and students such as Kasirer were bound to their initial identity as civilians or common lawyers. Synthesis between the two, Kasirer joked, was relegated to the precious leisure time of summer vacation. Today of course the two dominant legal traditions are taught together, not just concurrently but simultaneously in the same classroom, and synthesis occurs every day through lectures, study, and assignments.

Dean Kasirer expressed the view that most of us studying at McGill have a great advantage in not having an initial connection to the study of one legal tradition any more than the other. Furthermore, he added that it might be useful for the civil / common dichotomy to be afforded less importance in the future. In his view, various other legal traditions should be given a place in our studies. In a characteristic display of wit, he did however warn against the teaching of first-year trans-systemic courses based solely on the Talmudic law / Aboriginal law dichotomy, expressing fear as to the potential downturn in the coronary fortitude of faculty colleagues in the event of such a development.

Trans-Systemia, as the dean notes, is "our best claim to a special place in the world of ideas."

Students were treated to the new dean's wit yet again when he turned the same sardonic lens on himself. It might be noted that Prof. Kasirer has a fear of flying most out of step with his global or even cosmological perspective.

In effect the main thrust of Kasirer's speech may have been explaining the difference between what might be called "Law's Empire" (in a more generic rather than Dworkinian sense) and "Law's Cosmos."[1] In the analysis the dean presented, "law's empire" is local in that it focuses on the jurisdiction and the legal system. On the other hand, "law's cosmos" is, as the term suggests by its very nature, much broader. To study law's cosmos is to gain wider perspective on the ideas behind the law through addressing and engaging the "other" to the point at which the "other" is converted into an essential part of one's overall analysis. It is, in some measure, a cultural, anthropological, and linguistic study as well as a legal or philosophical study. Viewed from this perspective, the legal system of any jurisdiction, or even the civil law or common law tradition overall, is seen more as an epistemology than a set of rules. Similarly, legal education must in this view be more associated with a "way of knowing" rather than simply a way of finding "information."

Trans-Systemia, as the dean notes, is "our best claim to a special place in the world of ideas." The Dean emphasizes that trans-systemic learning is not constructed specifically for practice as a lawyer in any specific system of positive law. However, he goes further. Proclaiming himself to be a bit of a globalization skeptic, he suggests that the trans-systemic programme's more global perspective does not have as its first mandate to train students in foreign law merely because knowing EU law (for instance) might be increasingly useful in modern practice. Rather, it he finds it useful because it provides further exposure to different ways of knowing about law and its underpinnings, philosophical, linguistic, and cultural.

In the cold reality of modern legal education, there is much pressure to reconcile such academic ambitions to the future careers of students, especially would-be lawyers. However, an important justification invoked by Kasirer in favour of the "cosmos" approach is quite simply that studying law at McGill has always been about more than merely practice-oriented considerations. It would seem that for the Dean, legal education is at least as much about "education" as it is about the study of positive law in any jurisdiction. Ironically, this "education," through the perspective it fosters and the capacity for critical analysis it cultivates, might just be exactly what is needed as a basis for a prospective career, especially one involving the practice of law. ■

[1] The substance of this central aspect of the speech was also articulated in Nicholas Kasirer, "Bijuralism in Law's Empire and in Law's Cosmos" (2002) 52 Journal of Legal education 29.

Obiter Dicta: Wither Trans-systemia?

by Jason MacLean (Law I)

Last Wednesday was wack. The faculty, you'll recall, was abuzz with anticipation. I myself hopped, skipped, and jumped to school singing aloud "meet the dean, meet the dean, step right up and meet the dean!" Little did we know, however, that we were to meet not one but two deans of McGill law. Call them Dean de jure and Dean de facto. Yes, friends, it was a most manichean matinée.

In the first bill—carefully timed to not run over the second—we met Dean de jure, who waxed eloquently on law's cosmos and argued forcefully for the intrinsic transcendental value of confronting the Other. Most were duly charmed, only a few chagrined. Everyone—even the instrumentalists!—listened intently, and a few polite questions were raised near the end of the hour. Whereupon we all up and rushed across the hall—an irony, I am sure, not for one second lost on Dean de jure.

The over-subscribed second bill, starring Dean de facto, mapped out the routes to law's empire. Pointed questions were pressed to Dean de facto throughout the PowerlessPointless presentation. A few books of sorts were launched. Deadlines long since passed were announced and sincere hopes that they were met expressed. Whereupon we made the pilgrimage to the CPO, doubtless the first of many to come.

Law's empire 1 — Law's cosmos 0?

Depends, first of all, on what you make of the dichotomy. On its own, it maps harmlessly—if tiresomely—onto the instrumentalist dichotomy of what is required (law's empire) and what is a bonus (law's cosmos), an intellectual manicure. On this view strict instrumentalist imperialists can go one way, intellectual cosmologists another. Of course you may well reject this latter dichotomy, but the matter is moot: There is more at stake here than self-congratulatory labels, and these, I readily admit, go both ways.

What is at stake is the identity of McGill Law. As a learned colleague of mine put it, law's cosmos is all good and fine when tuition is relatively inexpensive. If tuition is de-regulated, however, law's cosmos as yet another liberal arts subject that may be pursued under the non-professional head of undergraduate studies will be pushed aside by law's professional empire as a matter of consumer choice. Of course my friend is exactly right. But we are not there yet, and the question becomes what can we do now to avoid going there at all?

A neat and tidy solution collapses the empire-cosmos dichotomy and argues that cosmos subsumes empire metaphorically as it does literally and leaves it at that—the ticket to law's empire is best purchased through a guided tour of law's cosmos. This is what Dean de jure believes, and so do I, but I know the instrumentalists are not having it. Nor, I suspect, will the partners and the heads of state whom we must convince, all of whom were trained and now toil almost exclusively in law's empire. If efficiency of educational delivery (of rules) is the ground upon which this battle is waged, and surely it is, then of course the instrumental imperialists will carry the day. While a significant part of the project of law's cosmos, if I understand it correctly, is to displace efficiency as the key determinant of value and purpose, to the imperialists this move amounts to simply begging the question. For cosmologists, to step onto the field of efficiency in particular and marginal utility in general is, ispso facto, to at once concede any chance of victory.

Weaker still is the argument that McGill—and by extension McGill Law—best exists outside the pressures of the market. Although I happen to think this is also true, it is nonetheless a recipe for being tagged an anachronism in sore need of modernization, particularly in the present climate of provincial politics.

The late University of Montréal comparativist Bill Readings tried in his brilliant book "The University in Ruins" to articulate a third way. Recognizing that the university is developing toward the model of the transnational corporation, Readings attempted find ways of resisting the commodificati of education in a manner that steered clear both the denunciation of capital and the no talgic mourning of a lost golden ag Readings proposed keeping the question value in relation to pedagogy open, to neith accept nor ignore the accounting logic of th global technocrats in the name of the tra scendental value of education. Reading advocated framing the question of pedagog cal accountability as something that exceed the logic of accounting.

True, Readings' proposal is a touc abstract and not a little programmaticall undetermined, but it is, I maintain, an exce lent starting point. It recognizes, first, th futility of trying to hide from the market, bu without conceding market omnipotence. also gives a nod to Leonard Cohen's dictum "they sentenced me to twenty years of bore dom, / for trying to change the system fron within." (I am not so sure, however, that any one is particularly afraid at the moment tha we might win. On the contrary.) "Selling trans-systemia is not necessarily to sell-ou but it is to at once admit ultimate defeat at th hands of co-optation. Readings' proposal moreover, is very much alive to the difficul ty of institutionalizing de-institutionaliza tion, which seems to me exactly the aim o trans-systemia as articulated by law's cos mos. By contrast, Readings demonstrate that the process and the result of chang come from neither within nor without, bu from that ineluctable anti-foundationa space—neither inside nor outside—in whic we are always situated.

Readings, above all, was an enlightene pragmatist, and an enlightened species o pragmatism is what we now need most t ensure that (a) Dean de jure becomes Dea de facto and that (b) Dean de jure's introduc tion to trans-systemia does not turn out to b its euology. Enlightenment, of course, has it costs. Among them the electricity bill. ■

The View From the Top

by Marci Surkes (Law I)

I'm not usually one for bathroom humour, but I have to admit to having a good laugh last week when two of the stall doors in a ladies washroom at the Supreme Court of Canada were hung with signs that read, "Out of Order".

I exited the washroom, and walked through the sun-drenched Grand Entrance Hall. The Court wasn't sitting that day and so the building was sedate and sublimely peaceful. A security guard sat by the front doors reading a magazine. He nodded at me as I passed and asked, rhetorically, "Isn't it a beautiful morning?"

"It is. And it's certainly beautiful in here."

"Are you a clerk?" He asked.

"Nope. Just visiting… I'm a first-year law student at McGill." I offered. Somehow I felt the need to prove that I was more than your average camera-wielding tourist.

"I see. Well my dear, I hope that you spend many more beautiful mornings here. Good luck at McGill."

I blushed, then found my way back to where my friend, Adam, was waiting. We were on a day trip in Bytown, and a tour of the S.C.C. figured prominently into the itinerary. Adam's friend is serving as a clerk, and had promised a guided tour. But when it was discovered that his friend had left early for the weekend, our plans seemed in need of reworking.

We were about to bounce when another clerk appeared. "Don't go," she urged, "I'll show you around! I was seriously just reading the wedding announcements in the *Post*."

Adam shot me a knowing "so that's what Supreme Court clerks do all day" look as we followed our guide.

Two rounded staircases and a marble hallway led us to a restricted area. With the Court on hiatus, we were forewarned that there would be little to see on this tour save the cafeteria. Nevertheless, we continued excitedly on our expedition. Our collective interest was piqued at the sight of a propped door. "What's in there?" I asked meekly, half expecting to be stopped by a Mountie.

"I have no idea, but let's check it out." Replied our fearless leader.

In front of us was an expansive glass wall. Beyond the windows ran the Ottawa River, its surface a magnificent reflector of red, yellow and orange foliage. To our right was the Library of Parliament, perched majestically above the trees. And to our more immediate right, within that chamber, were plush red leather couches and armchairs that the Friendly Giant himself could not have arranged more cozily. Wrap-around bookcases housed hundreds of legal volumes. There was a round table, around which were nine seats. One chair was more visibly ornate, and almost throne-like. And in one of the seats was a Court employee, scribbling notes on a timetable. "Welcome to the Justice's Conference room. Can I help you with something?"

Our tour guide spoke up, "oh so sorry to interrupt! I was just giving these McGill law students a tour of the building, and this door was open.. and I'm sorry."

"Don't be sorry," replied the Court employee. "It's alright, nobody's here. Would you like me to open the courtroom for you?"

Before we could even utter a unanimous "duh", the man was on his feet, keys dangling. We followed him to a nook adjacent to the Conference room. He opened one of the nine high school style lockers. Instead of gym sneakers or Oxy pads, this locker was hung with the red wool and white mink of Madam Justice Marie DesChamps. We all inched back as though unworthy of being in the presence of the robe.

"Wanna touch it?" Asked the employee.

None of us did. That tangibility would have shattered the surreal.

We were led to the Courtroom through the Justices' entrance. From the bench, the room appeared almost impossibly small, even in its grandeur. Natural light seeped in from tall windows overlooking courtyards, and cast shadows on the well-polished podium. The majesty of it all was awe-inspiring. On the bench, each workspace was equipped with a notepad, an overturned water glass and a box of tissues - strikingly normal tools for the performance of an extraordinary function. But suddenly that normality was reassuring. Sure, a modicum of mystique is inherent in such high-level institutions, but in that moment, I enjoyed knowing that even the Justices of the Supreme Court of Canada keep a stash of Kleenexes. ■

Speak White : A Little History...

by Marc-André Séguin (Law I)

The following is a reflection concerning a recent article by Mr. Michael Rowland, entitled "Speak White". This well-intentioned text tried to explain to Anglophones what they were missing by not trying harder to learn French. As an example, it denounced a situation where a francophone student was unable to order a drink in French at Thomson House because the bartender couldn't speak the language. According to Mr. Rowland, learning French, enforcing and "defending the rights of those we have come to perceive as the opposition" would "instill confidence in the hearts of our would-be adversaries" and, therefore, would re-enforce the Canadian federation.

With all due respect, this last point appears rather simplistic. First, the simple idea of wanting to "defend" Francophones' rights underlines an important problem: why should a francophone, living in Montréal, even NEED any enforcement of his or her rights to live and communicate in one's own mother tongue? And why shouldn't he or she be equally able to do so in the rest of the country? Aren't we supposed to be living in an officially bilingual country? Comparatively, do Anglophones have trouble communicating in English as they visit the so-called "belle province"? Could any one of you say that you ever encounter any trouble getting understood in your own Shakespearian mother tongue?

Another point to be made, Mr. Rowland, is that the Québec sovereignty movement is not solely based on the issue of language. That is why greater efforts from Anglophones to learn French will not save this "fragile federation". The sovereignty movement is in fact the product of centuries of arrogance and contempt that emanated from the English conquerors towards the French-speaking inhabitants of this land. Even though, as you so well put it, you would rather "sweep under the rug" all the incidents of the past, it doesn't change the fact that they happened and that the ▶

Québec nation still remembers them.

Once again, it is obvious that your text was well intentioned. It did underline some interesting facts about our lack of historical memory and how this affects the way we interpret events today – or how we even sometimes refuse to acknowledge them.

Allow me to illustrate what I mean. For example, take this text:

> [Our translation] "*From the scaffold, Hindenlang cried out to the crowd: "Vive la Liberté!" (Long Live Liberty!) Chevalier de Lorimier smiled and nodded. The trap door opened. The hangman had a lot of trouble with Narbonne, a one-armed man. As soon as the trapped door opened, Narbonne was able to free his hand and grab hold of the rope from which he was hanging, preventing it from strangling him. They made him let go by hitting him with the butt of a rifle but he managed to grab the rope again a few times until he was hit so often that he finally let go for good. His agony lasted fifteen minutes.*" [1]

This testimony, describing the execution of eleven men, eleven Patriotes, has much to do with the atrocities we often denounce as we watch them being described to us on the daily news where they still take place in many countries at war. It has much to do with what we, as Law students, must prevent from happening. It also has much to do with our own history.

This execution was held in a Montréal prison on February 15, 1839. The men who died were members of the Parti Patriote: French-Canadian rebels forced to military action and resistance by the British. Men who, without hardly any military experience, were forced to wage war on the greatest army in the world at that time. Let us note here that the intentions of this political party, which, ironically, is the ancestor of today's Liberal Party, were never to do so. The Patriotes' rebellion of 1837-1838 was rather an improvised resistance movement in answer to Britain's aggressive policies planned for quite some time by the conquerors [2]. The execution of these eleven men was just another way for the British to demonstrate their contempt towards the Francophones and for their nationalist movement, even if it was legitimate, since the Parti Patriote was an official political party, which formed the majority in Parliament. The catch was that this Parliament had no real powers.

And just to show that these demonstrations of contempt were expressed daily by these same Anglophone conquerors, consider this article coming from the Montreal Gazette of 1838 :

> *Why should the miserable and selfish French Canadians so recklessly spurn away from them, what every other nation on earth is envious of, and so ardently desires to possess? Who can tell, except on the principle, that being once slaves to the despotic sway and tyrannical laws of France, French Canadians of the present day, unregenerated from the ignorance and passive obedience of their ancestors, are desirous of perpetuating their moral degradation as a people. This is the only principle on which we can account for the aversion, which the French Canadians have always betrayed to the introduction amongst them of British institutions, and their blind and willful determination to resist every measure having a tendency to such an end.* [3]

Let it be noted that at that time, Francophone participation in elections was high enough to elect a Francophone party to form the majority in a British-style Parliament. Let it be noted that it was the Montréal Anglophone community, which set the Montréal Parliament on fire on the night of April 25th, 1849, therefore destroying their own democratic – and very British - institution. Let it also be noted that, on that same night, it was that same community that set the Parliament library on fire. That library, built by the "miserable" and "ignorant" French Canadians, was the largest one in the country, and was considered to be one of the first parliamentary libraries ever built, even predating by 16 years the one found in Great-Britain…[4]

Again, another demonstration of Anglophone arrogance. They despised our culture and called us ignorant and yet again not only burnt down their own institutions on the sole basis that it was constituted by a majority of legitimately elected Francophones, but they also burnt down one of our nations' greatest archives out of pure hatred and discrimination. After these incidents, we cannot be surprised that the descendants of our "ignorant" forefathers may still hold a grudge and want to form a country of their own…

Many of you may think that these kind of incidents are a thing of the past… Well they're not. Diane Francis, of the *National Post*, surely has proven it:

> *They whine and moan and damage our economy. They plot and scheme and dream about creating an ethnocentric, Francophone state. They revise history. They fabricate claims about recent injustices. They irritate English Canadians to help their case. They are, in a word, despicable.* [5]

Why would a self-respecting francophone want to belong to a country where he is seen as a "despicable" citizen, or as a racist, or as a liar?

You see, the sovereignty movement is more than just about language, it is also about collective memory and pride. We remember the atrocities our ancestors suffered by the hands of the conquerors; we remember the Anglophones and their so-called superior values; we remember these so-called "moral" and "civilized" persons torching our buildings, our history, our works; we remember these same persons ordering us to "speak white"... The words "Je me souviens" aren't written on our license plates for nothing.

To simply want to sweep these facts "under the rug" is not enough. The Anglophones, in order to understand the nature of the sovereignty movement, must also re-learn their own history and understand that the same arrogance we Francophones once suffered from is still, though not generally widespread, very present today.

To deny these historical facts – and to refuse to understand this movement and its true nature (i.e. not racist, not extremist, not violent, not unjustified) – is as big an offence – if not bigger - to the Québec nation as it is for a Thomson House bartender to not be able to serve a drink to a French-speaking Quebecker in his or her mother tongue. ■

Sources:

[1] Lettre conservée aux ANQ-M (Archives nationales du Québec à Montréal), Collection Rébellion de 1837-1838, cote 06M-P224, pièce n° 2973.

[2] Normand Lester. *Le livre noir du Canada anglais*, Montréal, Éditions les Intouchables, 2001, p. 91.

[3] *The Montreal Gazette*, October 27 1838; cited in Normand Lester, *Ibid*, p. 111.

[4] Normand Lester. *Op.cit*. p. 120.

[5] Diane Francis, "Readers support tough stance against Quebec separatists", The Financial Post, July 4th 1996; cited in Normand Lester, *Ibid*, p.12.

Accuracy and Responsibility: A Response

by Brendan Gluckman (Law IV)

"[This is] a battle over language sometimes more than over anything else."
— Diana Buttu, legal advisor to the P.L.O.

"Human rights are not a stage for national destruction; they cannot justify undermining national security in every case and in all circumstances. Similarly, a constitution is not a prescription for national suicide. But on the other hand, we must consider the values and principles relating to human dignity and freedom. National security cannot justify undermining human rights in every case and under all circumstances. National security does not grant an unlimited license to harm the individual."
— Aharon Barak, President of the Supreme Court of Israel

In response to some remarks I made concerning the title of Radical Law's presentation, "Israel's Security Fence or Apartheid Wall?", Jared Will wrote last week that: (1) the title was accurate; (2) the title was responsible; and (3) no vilification of Israeli society was intended.

(1) The Title Was Accurate

Jared writes that the title was accurate as it "reflected the central theme of the panel." This was not the sense in which I wrote that the title was *in*accurate, but on this point too I'm not sure I agree. The title was framed as a question and connotes an examination of competing perspectives. As Jared notes in his article, the title suggests a debate or at least a discussion of "whether the wall being built in the West Bank is truly designed to promote the security of Israeli citizens..." But there was no such discourse; the security role of the fence was not really discussed. It was a foregone conclusion to Ms. Buttu that the primary motivation in building the wall – reiterated often enough – was to "confine the Palestinians in as small a space as possible." Mr. Medicks, on the other hand, considered that there might be legitimate security reasons for the fence; however, these reasons were in his opinion shortsighted. The wall would only further Palestinian hatred and resentment of Israel, further diminish Palestinians' sense of self-worth and valuation of human life, and furnish more raw material to be exploited by extremists in the form of suicide-bombers.

Some might be surprised to learn that the Israeli Defence Force (IDF) Chief of Staff last week made remarks very similar to those of Medicks, as he criticized the current administration's policies with respect to the Occupied Territories. Whatever the merit of Medicks' perspective, the joint lecture seemed to omit any reference to the fence in terms of its actual security role. No facts or figures were given concerning the gravity, frequency or geographical-origin of terrorist attacks, there was no analysis of the likelihood of the fence in preventing these attacks, no discussion of the vulnerability of Israeli settlements/municipalities both within and outside the West Bank, no mention of the need to balance the right of a state to protect its citizens with the civil liberties of individuals living in occupied territories—or any of the types of inquiry one would expect of a presentation styled as a panel discussion on Israeli motivations in building a security fence.

(2) The Title Was Responsible

"If a state is engaging in a practice that separates human beings along racial, ethnic or religious lines in such a manner that not only are they relegated, without choice, to different geographic realms but also granted unequal rights, then the only irresponsible thing that we, the international community, can do is to ignore it, or to sugar-coat it ... if a state engages in those practices, there is no reason to spare in the moral approbation that accompanies the term 'apartheid'."

Aside from the difficulties fraught in transferring a term from one politico-historical context to another, "apartheid" is a particularly bad candidate for transposition as its very application stigmatizes and tends to preempt further discussion ("on the merits"). I do not doubt that in Israel, as in the Occupied Territories, Arabs find themselves discriminated against. But I do not think 'apartheid' is the appropriate term for what transpires in either case.

In 1948, the Afrikaner National Party enacted the laws of apartheid, institutionalizing racial discrimination in the state of South Africa. The race laws touched every aspect of social life, including the prohibition of interracial-marriage and the sanction of "white-only" jobs. In 1950, the Population Registration Act required that all South Africans be classified on the basis of race into one of the following three categories: white, black, or coloured (of mixed descent, Indian or Asian). All blacks were required to carry 'pass books' containing fingerprints, photograph, and information on access to non-black areas. In 1951, the Bantu Authorities Act assigned Africans to "homelands" - reserves of ethnic government. All political rights, including voting, held by an African were restricted to his or her designated homeland; a passport was required to enter "South Africa." In 1953, the Public Safety Act and the Criminal Law Amendment Act were passed, empowering the government to declare stringent states of emergency and impose severe penalties for protesting against or supporting the repeal of a law. During the states of emergency that continued intermittently until 1989, a person could be detained without a hearing for a period of six months. Thousands died in custody, frequently after torture. Those tried were sentenced to death, banished or imprisoned for life. From 1976-1981, under the rubric of "Grand Apartheid," four homelands were created, in effect denationalizing and geographically confining nine million South Africans.

There are approximately 1.2 million Arabs living in Israel, mainly residents from before the establishment of state of Israel or their descendants. These Arab-Israelis make up 20% of Israel's total population. They are citizens having the same legal and political rights as any other (i.e. Jewish) citizen of Israel. Arabic is an official language of Israel on equal footing with Hebrew. There are Arab political parties and Arab members of the Knesset (parliament). For what it's worth, Israel's Declaration of Independence calls upon the Arab inhabitants of Israel to "participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions." It states that Israel will "ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex" and it guarantees "freedom of religion, conscience, language, education, and culture." Israel has legislated ▶

extensive anti-discrimination laws. In short, Israel is not a state founded on a racist ideology whereby Arabs are considered inferior to Jews and relegated by law to such position. That being said, I have read that as a matter of policy, state-owned lands were not sold to non-Jews, and that security regulations have infringed greatly on the mobility rights of Arab Israelis.

The situation in the Occupied Territories is quite different. The Israeli-Palestinian conflict is situated within the larger framework of the Arab-Israeli conflict. The Occupied Territories are not and have never been considered a part of Israel.[1] In 1967, Israel captured the West Bank and Gaza from Jordan and Egypt, respectively, in the context of a defensive war. Jordan and Egypt had ("illegally") annexed the two areas after attacking the nascent state of Israel in 1948, following the Arab states' rejection of the U.N. Partition Plan. Prior to 1948, Israel, the West Bank, and Gaza, had all been part of the British Mandate of Palestine. Thus the Palestinians in the Occupied Territories have never been residents or nationals of Israel: for nineteen years they were resident in Jordan and Egypt; and for the last thirty-six years they have lived under Israeli occupation. The situation is further complicated by the fact that in 1921, 78% of the Mandate of Palestine was ceded to establish an Arab state: Jordan (approximately 70% of Jordanians are Palestinian); the fact that the UNWRA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) definition of a Palestinian refugee is a person who was resident in Palestine two years prior to the creation of the state of Israel;[2] and the fact that Israel has absorbed roughly the same number of Jewish refugees (800 000) from Arab countries.

Israel considers the Territories to be unassigned portions of the Mandate, the status of which – under international law – remains unresolved. International law dictates that territory taken from a state in the course of war is to be regarded as occupied territory to which Geneva Convention IV applies. Israel argues that as Jordan's annexation of the West Bank did not receive international recognition, the West Bank was not the sovereign territory of another state when taken by Israel in 1967 (the same logic applies to the Gaza Strip and Egypt). The Territories are therefore not "occupied territories" and Geneva Convention IV does not apply; nevertheless, the IDF voluntarily agrees to abide by the Convention's humanitarian provisions. Israel still considers in effect the 1945 Defence (Emergency) Regulations of the British Mandate, pursuant to which it carries out administrative detention, deportations, and the forfeiture and demolition of houses. Further, curfews and closures are frequently in effect and, in the past, methods that could fairly be described as torture were found to have been widespread in the interrogation of Palestinian detainees (Landau Report, 1987).[3] The Palestinians have legal standing as direct petitioners to the Supreme Court of Israel, and the Court often hears cases and intervenes in "real time." During the Gulf War in 1991, for example, the Court intervened after military authorities had distributed gas masks to only Israeli residents of the West Bank.[4]

(3) No Vilification of Israeli Society Was Intended

Frankly, I find that hard to believe. The poster announcing the event described Oren Medicks in the following fashion: 'Oren Medicks, like every other Israeli citizen, has served in the Israeli Defence Force, *but unlike most,* he has been active in the peace movement since the beginning of the first Intifada in 1987. He serves as webmaster for the Gush Shalom website when he isn't touring and speaking out [emphasis mine]."[5]

The general population's commitment to a peaceful solution aside, there are a host of Israeli civil liberties and otherwise "peacenik" organizations and associations that have operated for years to monitor and protect Palestinian rights and/or Arab minority rights in Israel. To name a few: the Association for Civil Rights in Israel; Adalah, the Legal Centre for Arab Minority Rights in Israel; B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories; the Public Committee Against Torture in Israel. (In fact, the particularly attentive may have noticed that B'tselem's name appeared at the bottom right of a number of the PowerPoi slides.)

In his article, Jared drew a distinctio between "the state" and "society." And whil I find such a distinction laudable, I think w can go - good criticism goes - even furthe The best criticism distinguishes not jus between the state and society, but als between administrations and policies. To d otherwise is to reify the state and imbue i with an agency and constancy of will it doe not otherwise possess – it implies constan policies that have continued irrespective o administration, which often, and certainly i the case of Israel, is not the case. Moreover given the particular circumstances of Israel's situation, in which only three Arab states (Egypt, Jordan and Mauritania) recognize the state of Israel – and vilification of the "Zionist entity" is a commonplace reality – to frame one's criticism in terms of being anti-Israel (rather than anti- this or that policy or administration), serves to delegitimize Israel as a state and undermine its right to a continued existence.

Afterword

Last Tuesday, IDF Chief of Staff Moshe Ya'alon criticized the Sharon administration for its current "destructive policy" with respect to the Occupied Territories, stating that "it increases hatred for Israel and strengthens the terror organizations," that "[t]here is no hope, no expectations of the Palestinians in the Gaza Strip, nor in Bethlehem and Jericho" - that Israel was "on the verge of catastrophe" - and that the path of the fence would make the lives of some Palestinians "unbearable." ■

[1] This is not to say that various administrations have not anticipated future annexation; beginning with Menachem Begin's right-wing government in 1977, various administrations have actively promoted the establishment of civilian settlements in order to make separation of the Occupied Territories from Israel politically unfeasible.

[2] "Palestine refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict."

[3] In 1999, the Supreme Court of Israel accepted the legal argument against the use of *any* physical force or other methods of pressure, including sleep deprivation, in interrogation; prior to that, moderate physical force had been permitted; HCJ 5100/94, Public Committee Against Torture v. the State of Israel.

[4] HCJ 168/91, Morcos v. Minister of Defense.

[5] I noticed that during Medicks' actual introduction, the words "unlike most" were omitted; I wonder if it were not because the speaker was himself embarrassed by the description.

Right is Mike: About the One-Finger Salute

by Michael Hazan (Law II)

Inspired by Bloc Quebecois MP Bernard Bigras, who recently directed an inappropriate gesture at Immigration Minister Denis Coderre during Parliamentary debate in the House of Commons, I have decided to write an article on the origins of the particularly glorious insult commonly known as "the finger."

A popular, but untrue urban legend suggests that the grand tradition of "flipping the bird" began in 1415 at the *Battle of Agincourt* between France and England. The French, expecting victory over the British, proposed to cut off the middle fingers of all captured English soldiers. Without their middle finger it would be impossible to draw the renowned English longbow and therefore they would be incapable of fighting in future battles. The English longbow was a weapon made of the native English Yew tree, and the act of drawing the longbow was known as "plucking the yew", and later shortened to "pluck yew". Much to the bewilderment of the French, the outnumbered English won in a decisive upset and began mocking the French by waving their middle fingers at the defeated French, saying, "See, we can still pluck yew! Pluck Yew!" However, after navigating through the murky and unreliable Internet sites, it seems as though that the ultimate insult actually in fact dates back as far as ancient Greece and Rome.

The first written record of someone giving the "one-finger salute" comes from the writings of Aristophanes, who spoke of it in *The Clouds*, a play from 423 B.C. After a heated exchange in the rehearsal of the play, one of the actors 'saluted' another by raising the middle finger of one of his fists.

According to www.mindlesscrap.com, the finger is mentioned several times in ancient Roman literature. The historian Martial once wrote, "Laugh loudly, Sextillus, when someone calls you a queen and put your middle finger out." In another reference, Martial wrote that a certain party "points a finger, an indecent one", at "some other people." Another historian Suetonius, writing about Augustus Caesar, says the emperor "expelled [the entertainer] Pylades because when a spectator started to hiss, he called the attention of the whole audience to him with an obscene movement of his middle finger." It has also been said that Emperor Caligula, as an insult, would extend his middle finger for subjects to kiss.

Whatever the case may be, the gesture has always been considered rude. However, I still do not understand that why such a simple insult has such large ramifications. Despite the fact that we have seen the finger hundreds of times since we were kids, the salute usually ignites a fiery passion between opponents every single time it is given. One would guess that most individuals would be desensitized to the gesture because of its rampant use in daily life and in the movies. I guess it all comes down to the context in which the salute is given. The Bigras incident may demonstrate how mundane the gesture has become; yet it also suggests that there are no effective deterrents preventing our beloved parliamentarians from giving the finger.

In my humble opinion, this state of affairs must be altered immediately. In order for Jean Chrétien to secure a lasting legacy, he should introduce a motion outlawing future one-finger salutes in the hallowed halls of Parliament. If an MP improperly salutes another, Parliament should adopt the punishment trumpeted by the French at Agincourt: cutting off the offender's middle finger. No doubt, the law would pass with ease after being considered by his oft-maligned backbenchers. Further, adopting an idea that supposedly originated in France will likely get the Bloc Québecois off his back. While cutting off an MP's middle finger would likely be deemed cruel and unusual punishment, an obvious Charter violation, it would be the perfect time for the federal government to invoke the notwithstanding clause, providing Canadian law students with a "clear-cut" example of its use. By passing such a law, the Liberal government will renew our country's commitment to parliamentary etiquette and respect. ■

Manhattan Boyfriend

by Edmund Coates (Alumnus II)

(The lobby of the Metlife Building: two men in business suits rush past each other. As they pass, their briefcases catch, and one man's briefcase is knocked to the ground.)

Steve *(picks-up the other man's briefcase and hands it to him)*: I'm very sorry.

George: It's quite all right, I was in a rush.

Steve *(looks over George)*: My name is Steve Armitage, I'm with the Bankruptcy area of Ross & Johnson.

George: I'm a corporate litigator with Carter, Adams & Waldon. Have I seen you at The Slide?

Steve: Maybe.

George: We should have lunch sometime.

Steve *(hands George a business card)*: I'm 30 years old, I earn 196 000$ a year. I went to McGill. I have a black belt in Karate and I love nature, particularly big trees.

George *(hands Steve a business card)*: I'm 29 years old. I earn 185 000$ a year. I have two dogs. I went to N.Y.U. and I'm really into Zen.

Steve: You look all muscle, what gym do you go to?

George: My firm has an in-house gym. We even have our own cardiac defibrillator. Mind you, that usually comes in more handy in the office. So when can we do lunch?

Steve *(gets out personal assistant)* Well, I'm involved in the Colonial Airways bankruptcy, that should take up October and November. What about in mid-December?

George *(gets out his personal assistant)*: No, December's no good for me. I'll have a big trial coming up. How's February for you? ▶

Steve: Sorry, that gets us into tax time. What about early April?

George: Yeah, yeah, I'll have time. What about the second Tuesday, 9 April?

Steve: Yeah, O.K., I can make that. I'll tell my assistant to call your assistant to confirm, and set up what restaurant.

George: If I'm not going to see you for seven months, can we kiss now?

Steve: Well, I don't usually kiss just like that … even on a first date.

George: When do you think you will be free for a second date?

Steve *(Looks at personal assistant)*: After April, May is booked-up, but I'll have time in June.

George: If we're not going to have a second date until at least nine months from today, can we kiss now?

(*They kiss briefly.*)

(*Pause*)

Steve: Actually, I think I could free myself up in two weeks.

George: What about next week?

Steve: What about this week?

George: What are you doing now?

(*They kiss briefly.*)

(*Pause*)

George: Actually, you're a bit of a slut. I hat that in a man. That's a real deal breaker fo me.

Steve: Oh yeah. Well you're much too domi- nating. I hate that in a man. That's a real dea breaker for me.

George: Who do you think you are? I'll see you in court.

Steve: See me in court? You can bet on it.

(*They march off angrily in opposite direc- tions.*) ■

John Peters Humphrey Human Rights Workshop Series:

The Emerging System of International Justice: Prospects for Further Advances in the face of Mounting Opposition

Presented by Richard Dicker
Director of International Justice Program, Human Rights Watch
Transcribed (as best he could) by Sébastien Jodoin (Law III)

During the last decade, the international community took unprecedented steps to limit the impunity too often associated with crimes against humanity, human rights atrocities and genocide.

The ad-hoc tribunals established in the former Yugoslavia and Rwanda breathed life into international humanitarian law and proved that these crimes can be prosecuted where there exists a political will to do so. They have demonstrated the utility of international humanitarian law. This was a tremendous leap in the redefinition of international criminal law and national criminal law. They demonstrated the viability of an international criminal law mechanism. We saw for the first time the indictments of head of states; they were made accountable for their acts before international justice. The ad-hoc tribunals had primacy over national courts in light of the stark failure of national courts to effectively bring to justice the perpetrators of war crimes.

The short time of the coming into force of the International Criminal Court (ICC) is a testament to the existence of international support for the ICC. The greatest threat to the ICC has been the ideological campaign of the Bush administration, which has systematically tried to marginalize and undermine the ICC. The US has put pressure on states to sign unlawful bilateral immunity agreements, agreements granting American citizens immunity from prosecution by the ICC. One day, this will mark a real low point in US foreign policy in regards to respect for human rights and the rule of law. Of course, this cannot be helped until there is regime change in the US, or at least a change of attitude. Nonetheless, the US' campaign has not succeeded in marginalizing the court, for it has now moved from the abstract, the Rome statute, to the concrete as it begins its operations.

The international justice mechanism is nonetheless fragile. It should be recognized that international justice is imperfect and is a last, but necessary resort. This is so in light of the particular relationship set up by the ICC between national and international criminal courts.

The cornerstone of the ICC is the principle of complimentarity, which was codified in article 17; this is not like the situation of primacy of the ad-hoc tribunals. The ICC will only look conduct a small number of prosecutions and will only be involved when national courts are unwilling or unable to prosecute war crimes themselves. It is to be expected that the exact meaning of these terms will be litigated.

The national court systems should be the first line of investigation of these crimes. The ICC does not seek to supplant these courts, but to reinforce the national courts. The ICC should only act when the national courts are unable to act whether because of a lack of political will or a lack of resources. The principle of complimentarity was also the result of an astute political judgment; states were more likely to ratify the treaty if it provided respect for national court systems.

The Pinochet litigation in England and Spain illustrates the principle of complimentarity. It had a very beneficial effect on the national courts of Chile, which up to that point, had not been concerned with the crimes committed under his regime. The abstention of the Chilean national courts led to the case being brought to Spain under its universal jurisdiction; this litigation subsequently had the effect of reviving interest in the Chilean court system to prosecute the crimes committed under the Pinochet regime.

The current political climate in interna- ▶

tional relations, notably the virulent ideologically driven unilateralism of the US and the schism in the European Union, has been less favourable towards international justice. The current ad-hoc tribunals have cost money and taken a lot of time. There is currently a belief that the ad-hoc tribunals are extinct animals and that they should be laid to rest, without regard to effects this might have in regards to the impunity of war criminals. New efforts of international criminal justice led by the international community in Timor and Kosovo are part of this 'justice on the cheap' trend; this is a response to the enormous costs of the ad-hoc tribunals. As for the Sierra Leone tribunal, a hybrid tribunal; it is too early to examine its effectiveness in regards to accountability. However, this tribunal too has also lost its allure for the Security Council because of its costs and because the indictment of Charles Taylor by the Sierra Leone prosecutor which jeopardized the signing of a peace treaty with Ghana.

The current political climate in international relations, notably the virulent ideologically driven unilateralism of the US and the schism in the European Union, has been less favourable towards international justice.

Three steps need to be taken in the future. First and foremost, it is essential to acknowledge the limits of international justice. These are mechanisms of last resort, which are ill suited to prosecuting crimes which are committed a thousand miles away in a different country and cultural setting. The courts are far removed from the victims, from the crimes and this has minimized the impact of the work of the tribunals. We have been under a romanticized idea of the Nuremberg trial; however, that trial effectively failed to hold Nazi leaders accountable. It was not until the 1970s' that Germany came to terms with the crimes committed under the Nazi regime. Second, we have to learn from the lessons of the past; we should examine the failings and achievements of the ad-hoc tribunals. Third, the principles of primacy and complementarity will have to be revisited. The ICC will be the principal instrument to take these steps.

And so, while there has been tremendous improvement, the mechanism stills need to be refined. The key in the long run will be calibrating the efforts of international justice mechanisms and those of national authorities.

Question: *Do you think that sacrificing custodial jurisdiction was too high a cost to obtain more ratifications?*

R. Dicker: Do you want to make me cry? For the longest time, the proposal on jurisdiction was that of the Korean delegate which included four heads of jurisdiction, including custodial jurisdiction. The British, unhelpfully, cut that proposal in half, in part to satisfy US demands. One of the most frustrating parts of the Rome statute is that fact it contains many compromises which were included to please the US and they did not even ratify the treaty in the end. On the other hand, the ICC's jurisdiction did need to be limited if it was going to attract ratification from a great number of states. In the long run, its limited territorial jurisdiction can be remedied by universal jurisdiction.

Question: *What will be the role of the ICJ in interpreting the Rome statute?*

R. Dicker: It is my hope that the ICJ will not interfere in the interpretation of the Rome statute, as the ICC should be master of its own statute. I don't think you will the ICJ interpreting questions of jurisdiction, however, it is possible that states could submit their disputes as to interpretation of the statute to the ICJ. However, I hope that will not be too common because the ICJ would be interfering with the Appellate chamber of the ICC; this would create a hierarchy between the courts.

Prof. El-Obaid (*who was attending*): I think you will see both. On the one hand, it is important that the ICC be independent and that it may interpret its own statute. On the other hand, I think in regards to technical questions or administrative questions in regards to the interpretation of the Rome statute, I think the ICJ will probably be called upon by states quite frequently. ■

Poetry Corner

Trust

I'd like to buy some trust!
I'd like to buy some trust please.
Can I buy some trust?
I'd like to buy some trust.

Sylvia Boss

Something glints in the mud

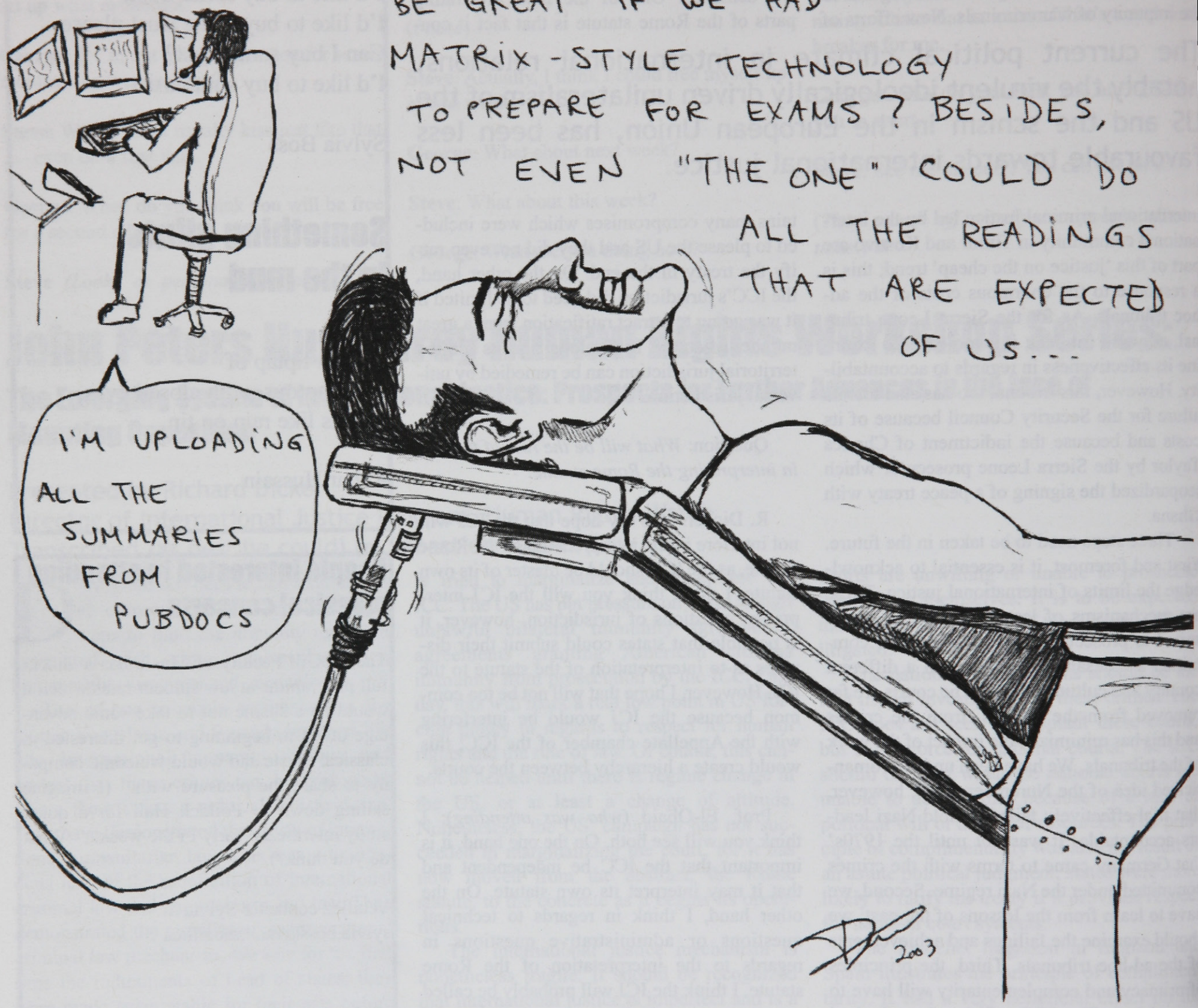
Present tiptap of
sixty laptops, with closed eyes,
sounds like rain on tin.

Akbar Hussain

People interested in attending classical concerts

The McGill Faculty of Music has a chockfull programme at low student rates which it would be a shame not to take some advantage of. I'm beginning to get interested in classical music and would welcome company to share the pleasure with. (I imagine sailing down to Pollock Hall for a quick study intermezzo early in the week... What do you think?).

Veuillez contacter Sylvia à:
sylvia.boss@mail.mcgill.ca


WOULDN'T IT BE GREAT IF WE HAD MATRIX-STYLE TECHNOLOGY TO PREPARE FOR EXAMS? BESIDES, NOT EVEN "THE ONE" COULD DO ALL THE READINGS THAT ARE EXPECTED OF US...
I'M UPLOADING ALL THE SUMMARIES FROM PUBDOCS
2003

The International Criminal Court: A Human Rights Workshop with Richard Dicker

by Bram Dov Abramson (Law I)

When you direct the International Justice Program at the largest U.S.-based human rights organisation, enthusiasm for international law is to be expected. When, on top of that, you were a behind-the-scenes participant in pulling together the treaty creating the International Criminal Court (ICC), waxing rhapsodic about global civil societies isn't out of order.

Human Rights Watch lawyer Richard Dicker's ICC workshop, presented to a crowded room 202 last Wednesday, 5 November, had a bit of that. But those used to news spin pitting the ICC against national sovereignty would have been surprised by his matter-of-fact yet vigorous defence of the new court and, in particular, its complementarity with national jurisdictions.

The International Criminal Court is an international criminal tribunal that will prosecute individuals for genocide, war crimes, and crimes against humanity. With roots in the Nuremberg tribunal before the Cold War, then more recent origins in the post-Cold-War 1990s via the ad hoc tribunals created in the former Yugoslavia and Rwanda, the ICC was finally made reality through a 1998 treaty hammered out in Rome. Today, ninety-two countries have signed on to accept the court's jurisdiction and cooperate with its activities; among the non-signatories is the U.S., a significant absence given the scope of America's extraterritorial activity. The ICC's jurisdiction began on 1 July 2002, and it is now reviewing its first cases for possible prosecution.

In reviewing this history, Mr. Dicker talked warmly of the late 1990s as a time of "signal accomplishments" in this "new, fragile system of international justice". Though imperfect, the ad hoc tribunals improved steadily; through them the international community showed that it could bring criminal justice to bear when national courts were either unwilling or unable to. Tensions in the ratification process have, it is true, intensified; compromises in the Rome treaty intended to reassure U.S. concerns were not able to win over what Dicker called the "ideologically-motivated opposition of the Bush administration."

That opposition has implied that the ICC stands above and beyond national actors. It does not, explained Dicker, who called international justice an "imperfect remedy of last but necessary resort". The relationship of the ICC to its member states is not one of primacy but of complementarity, working alongside national jurisdictions. If anything, it is hoped the ICC will help strengthen national courts.

Although clear about the role for international justice and international law, Dicker was also at pains to conclude with a touch of hardnosedness. Having to resort to an international tribunal means being far removed from the crimes being prosecuted, the victims of those crimes, those in whose names the crimes were committed, and the impact that the trials have on the societies from which they derive. Strong national courts will best protect human rights.

Nor, stressed Dicker, should we have a romanticized view of the ICC's antecedents. The Nuremberg tribunal was short-lived. Impact on post-war Germany was limited until a new German generation began asking tough questions in the 1970s. And lessons from the two ad hoc tribunals have yet to be fully explored. Still, national courts are unlikely to become uniformly capable of bringing war criminals to justice. Careful strategic steps have to be made, and the ICC will be the principal vehicle for making them.

Students had the chance to try taking some of those steps in the form of a mock trial based on a fact pattern carefully prepared by Dicker and by McGill law student Janina Fogels, who last summer worked with Mr. Dicker at Human Rights Watch's New York headquarters through the McGill Human Rights Internship Programme. Students were divided into groups, each of which was invited to argue different sides of a case emerging from violence between ethnic groups in Ituri, northeastern Democratic Republic of Congo—a case which some think may end up at the real-life ICC. Thanks in no small part to the preparatory materials assembled meticulously by owie Kislowitz in collaboration with his Human Rights Working Group workshop co-coordinators Adriana Greenblatt and Anna Matas, a well-documented and vigorous debate followed, students thought on their feet, and all walked away with a better handle on both the issues and the personalities behind it.

Which isn't too bad for a two-hour midday break—and more is on the way. The next John Peters Humphrey Human Rights Workshop will take place on 19 November, when Catherine Gauvreau of Action Réfugiés Montréal (ARM) will lead a workshop on the detention of refugee claimants in Canada. Watch this space for details. ■

NEWS ITEM:

Jeff Roberts Leaves Law, becomes Smut Peddler

by Mike Brazao (Law III)

MONTREAL – Self-appointed cultural critic Jeff Roberts shocked the Faculty of Law at McGill University last week when he announced that he would be immediately discontinuing his studies in order to embark upon a career as a writer for Harlequin romance novels. The cynical scribe's decision to take a turn for the tawdry came fresh off the heels of his sometimes riveting, sometimes revolting exposé about the undergarments of his female classmates, which appeared in the *Quid Novi* one week earlier.

The puerile piece, which sources say was intended to serve as a springboard for a career in investigative journalism, backfired terribly. Shortly after it was published, the article created a brouhaha of tantric proportions, which reverberated throughout the student body for days. Pundits of all shapes and sizes tried to account for what went wrong. Many said it was due to our society's decaying moral fabric. Others claimed the culprit was ▶

television. Jared Will pointed the finger at Quebec's low tuition costs. Daniel Moure blamed the Canadian *Charter*. When asked for his input, LSA VP Sports Stephen Panunto said that it was a classic sign of the sexual frustration experienced by someone who had never been to Law Games.

However, when all was said and done, the consensus that emerged was that the article was not well received because it had the unfortunate effect of making Mr. Roberts look like a creepy perv.

While Mr. Roberts declined to hold a press conference in response to his momentous shift in life trajectory, the *Quid Novi* was able to track him down in one of his usual haunts – a seedy biker bar that doubled as a brothel employing teenage runaways. "Ahh...*this* is the essence of Montreal..." mused the acerbic Anglo as he sipped on a Unibroue and tried to ignore the burly man next to him who was urinating on the floor, "... but it probably won't be long until the insidious powers of gentrification wipe this place off the map too. St.-Laurent used to be littered with great places like this... *now look at it.*"

After this bit of wistful claptrap, the self-styled Larry Flynt turned his thoughts to his new career. He speculated that since writing bodice-rippers is a very time-consuming vocation requiring tremendous focus, he would probably have little time for his many extra-curricular hobbies, like enticing professors to smoke controlled substances with him and writing newspaper articles that criticize absolutely everything.

Another informant told the *Quid Novi* that she was once accosted by Mr. Roberts at a sponsored Coffee House, when he uncouthly offered to show the damsel his "carbolic smoke balls."

Finally, after some prodding, the issue of the wayward article was reluctantly broached. "Okay, maybe towards the end there it *did* read a little bit like a bad episode of *Bleu Nuit*. But the overall thrust of the piece was gold... *solid gold.*" He then stated that he was resentful of the "prudish wenches" who threatened to cancel their subscriptions to the faculty newspaper if the editors wouldn't cease publishing his erotica.

One of those wenches, who declined to give her name, called the *Quid Novi* to tell her harrowing tale. "I always knew there something was wrong with that boy, ever since I saw him 'accidentally' drop his pen on the floor 15 times during *Criminal Law*. I tried to do something about it, but Professor Skl told me that according to *Bolduc and Bir* being a peeping tom is only a crime if you d it at night near a dwelling house."

When asked about this allegation, M. Roberts told the *Quid* that surreptitiousl peeking into the nether regions of the faire sex is an "excellent way to learn th facts of life". He also attested, some what cryptically, that he was "serious ly considering going to medica school."

Another informant told the *Quic Novi* that she was once accosted by Mr. Roberts at a sponsored Coffee House, when he uncouthly offered to show the damsel his "carbolic smoke balls." Yet another alleged that he would call her late at night, begging to talk about "Soucisse". It was due in no small part to these encounters, and many others, that Mr. Roberts earned the colourful moniker "Sansregret" by Thanksgiving of his first year in law school.

When asked what he would miss most about the faculty, the fledgling author sat pensively at his barstool for a moment, listening to the background wails of a man being stabbed in the abdomen with a pool cue, before adding decisively: "Two words: *Lara Khoury*." ■

Micturating into the Prevailing Breeze:

Canada and the *Charter*, Part 7 of 7: Liberal Utopia or Participatory Democracy?

by Daniel Moure (Law III)

The *Charter* has had an enormous influence on the Canadian consciousness. Social policies today are discussed as much in terms of their constitutionality as their desirability, and the courts have become the accepted arbiters of many social issues. Twenty years after the inauguration of the *Charter*, 70 per cent of Canadians trusted the courts more than Parliament or the Legislatures to protect their fundamental rights. According to McLachlin C.J., the *Charter*'s popularity demonstrates "that Canadians have acquired a certain level of knowledge of the contents of the *Charter*... and have an understanding of the respective roles of the courts and elected officials." In fact, however, 52 per cent of Canadians could not even hazard a guess as to one right supposedly protected by the *Charter*, and many of those who did hazard a guess were wrong. These are not the signs of a vibrant democracy.

The *Charter* is possibly even more popular within the legal profession than it is among the general public. Not only is it the most spectacular make-work program for lawyers and law professors since Confederation, but it is also an obvious avenue through which concerned individuals can attempt to make a contribution to their society. But the *Charter* has a rather poor record of doing what apologists claim it is supposed to do, which is protect individuals and vulnerable minorities.

In defence of judicial review, apologists invariably point to about two dozen US Supreme Court decisions handed down by the Warren and early Burger Courts between 1953 and the early 1970s—including *Brown v. Board of Education*, *Cohen v. California*, *Harper v. Virginia Board of Education*, *Miranda*, and *Roe v. Wade*. Many of those cases were significant victories. But such a narrow focus overlooks the hundreds of cases in which the courts have used their powers of judicial review to undermine protections for vulnerable groups, particularly blacks and workers. To cite only the most notorious case, the US Supreme Court used the Bill of Rights in *Dredd Scott* to declare that the right to property in slaves trumped

slaves' right to liberty. Apologists' narrow focus also overlooks the thousands of instances in which the courts were complicit with governmental abuses, through either acquiescence or silence. ▶ Again, a single example must suffice here: while the US Supreme Court declared in 1971 that one Mr. Cohen was free to wear a jacket emblazoned with the motto "Fuck the Draft" in protest against the Vietnam War, neither the Bill of Rights nor judicial review prevented the mass arrest of 13,000 people protesting the same war during the same year in Washington, DC.

Canada's history of rights-based judicial review is only two decades old, but it has echoed the much longer history of American judicial review. As I have argued in this series, Trudeau's main reason for introducing the *Charter* was to thwart Quebeckers' democratic right to self-determination, and the Supreme Court has used the *Charter* to undermine the most important parts of Bill 101. The courts have used the *Charter* to roll back protections for workers and unions, increase corporations' immunity from popular control, and strike down third-party election spending limits. The courts' most consistently positive record under the *Charter* has been in regards to women and homosexuals, groups whose rights the majority of Canadians also want to see protected. But one of the most vulnerable groups in Canadian society - Muslim foreign nationals -has received no protection from the *Charter* since September 11, 2001. The greatest beneficiaries, it seems, have been lawyers and the rich. And the greatest victim has been Canadian democracy.

In a sense, Canadian society is beginning to resemble a liberal utopia. The façade of democracy, understood as collective communitarian action, has become less important in the last few decades, and individuation has asserted an increasingly unchallenged supremacy. Liberalism has always made a strong distinction between the public and the private spheres. The proper role of the public sphere, according to liberals, is to establish ostensibly neutral rules that leave supposedly equal individuals free to bargain amongst themselves within the private sphere. This distinction between the public and the private atomizes society, since it subordinates collective action to the imperatives of individualized private action. Judicial review contributes to this atomized conception of society because it allows individuals to believe that they can find personal and private solutions to social problems and exist unmolested at all other times. This, then, is the liberal conception of utopia, according to which democracy is defined not by participation, but by the freedom of exit. In a recent dissenting opinion, for instance, Justice McIntyre declared that a mandatory unionization scheme was unconstitutional because it was undemocratic. And it was undemocratic because it denied individuals the freedom to dissent by not participating.

The freedom to dissent is essential to a democracy. But dissent through non-participation, at least in our present society, is an illusory form of freedom because it makes it impossible for individuals to change those institutions that most constrain them. We work more than any previous society ever has, except during the period between the Industrial Revolution and the 1920s. In sixteenth century Europe, for example, there were 189 holidays each year. In present-day Canada, the 40-hour workweek has already become the stuff of legend for full-time workers, and more Canadians are working more hours. In 1967, 32 per cent of Canadian families had two income earners. By 1981, that figure had increased to 55 per cent, and by 1998, it had increased to 64 per cent. There can be no doubt that the ability of women to participate in the workforce has been one of the key victories of the feminist movement. But rather than leading to a more balanced relationship between work and life for both women and men, the result has been a vast increase in the total number of hours worked - so much so that work-life balance was the primary work-related concern among both men and women in a recent poll.

Only through collective action can this situation be improved. A vibrant democracy requires participation, not an illusory freedom of exit. And participation requires the time to participate. Economic experts tell us that economic issues are too complicated for the average citizen to understand. In the meantime, "market forces" are requiring Canadians to work far more than they would wish. Legal experts tell us that legal issues are too complicated for the average citizen to understand. In the meantime, "the Constitution" is determining social policies. Judicial review under the *Charter* relegates one of the most important aspects of a community - the ability to define that community's basic values and aspirations - to experts. At the same time, the *Charter* has served to undermine people's potential to participate in their community by curtailing their ability to exercise control over their work environments. Perhaps it is time for *Charter* cheerleaders to retire their judicial pom-poms and consider that they can make a greater contribution to their community by helping create conditions that allow all Canadians to participate in their own governance. And for those who fear that greater political participation may threaten the rights of vulnerable individuals and minorities, no less a cheerleader than Peter Hogg has argued that "[d]emocracy is without a doubt the most important safeguard of civil liberties." ■

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Hiccup...They Tasted Like Chicken!

by Kirsten Mercer (Law I)

Superior Force continued its dominance of the mighty McGill D League on Tuesday with a convincing 6-2 victory over rival Tastes Like Chicken (TLC). Undeterred by the miserable weather and in spite of some early confusion behind the bench, the team battled through two tough periods of hockey, extending their winning streak to three games.

TLC presented the team with their most formidable opponent since the first game of the season, but The Force proved Superior in the end. The game winner was scored by Jeff Derman. Dan Ambrosini added two, and wingers Pierre Covo (or possibly Charlie Flicker?!) and Bob Moore, along with defenseman Neil Horner rounded out the scoring.

The victory was due, in no small part, to the frighteningly flexible play of net-minder, Jason McLean, who gave another strong showing.

After having made swift dinner of (TL) Chicken, Superior Force is ready for their next course. After a solid two weeks of rest, the team will meet Sigma Chi on November 18th, when they will seek to extend the win streak to four games.

The Force will continue to bravely represent the Faculty in the D League, and welcome any interested hockey fans to come out Nov 18th at 20:30 to cheer them on. In spite of the outstanding play of the Force, McGill D League Hockey is not always pretty, but it's always! ■

GET YOUR PARTY ON!!

Legalease (the faculty's radio show and MELSA (the entertainment law association) are hosting this week's coffee house - so you KNOW it's going to be entertaining!

Come for the booze, come for the music (guaranteed to keep you partying til the breakadawn, or at least 7:30 p.m.), come for the food, but whatever you do, don't miss the hottest party to hit the atrium since Lord Slynn of Hadley (a.k.a. Slynn Shady) jumped from the lounge playing air-guitar with his tie wrapped around his head last year (note: event did not occur).

CPO Newsletter, November 7th, 2003

Bonjour à tous!

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1) PLACEMENT STATISTICS

Pour ceux et celles qui ont participé aux U.S. OCIs, Toronto OCIs et bientôt aux East/West OCIs : Auriez-vous l'amabilité de me faire parvenir vos résultats de placement. En d'autres termes, laissez-moi si vous avez trouvé un poste grâce à ces processus de recrutement. Sachez que ces résultants resteront confidentiels.

2) POSTINGS (PART-TIME, FULL-TIME)

**Program Associate, DPK Consulting - Washington, D.C. DPK Consulting has an expanding portfolio of projects in the rule of law and good governance fields. USAID recently awarded DPK one of five contracts under a $125 million global International Governmental Integrity and Anti-Corruption Technical Assistance Indefinite Quantity Contract (IQC). DPK seeks a Program Associate for its new Washington, D.C. office.

The Program Associate will assist in the business development activities of the Washington D.C. office, maintain the office's administrative and financial records and provide overall administrative support to the office; and support recruitment efforts and assist in other research and proposal development activities.

The Associate should have the following qualifications:

* Minimum of a bachelor's degree in relevant field
* Relevant professional experience in the development field preferred
* Strong computer skills in Microsoft Word, Excel, and Power Point
* Competency in a second language preferred

Please forward resume to resume@dpkconsulting.com and include a completed USAID Contractor Employee Bio-Data Sheet. Please reference "DC03-002" in the subject line of your email. Positions open until filled.

**Mitchell Goldberg, is looking for an individual to do legal secretarial work. The time commitment would be 20 hours per week.

Me Goldberg is a refugee and immigration lawyer who has set up an independent practice. The work would include tasks such as compiling exhibits, processing personal information forms for the purpose of refugee claims, and other tasks to facilitate processing refugee claims in the refugee protection division of the Immigration and Refugee Board.

The location of the office is at 507 Place d'Armes, Suite 1200. His phone number is 844-7528.

3) BAR APPLICATIONS

**Les formulaires de demande d'admission à l'Ecole du Barreau du Québec seront disponibles à partir du 1e février 2004. IMPORTANT : Vous n'aurez qu'un mois pour préparer votre demande puisque la date butoir sera le 1e mars 2004. La date limite hors délais : 2 avril.

**ALBERTA BAR: The Circular No. 1 is usually sent to placement offices in November. I will keep you posted when it will be available at the CPO.

**Applications for the Law Society of Upper Canada are available from the OUS. Deadline for submission: 17 November 2003. BAC applications for Ontario are available online for students who are not in Ontario for this term.

4) EAST/WEST RECRUITMENT - Locations

*** I would need the names of students selected for interviews as I have to RSVP for the reception on your behalf and prepare nametags. Than you.

East meets West 2003 Interviews, November 13th and 14th - TORONTO (LOCATIONS & INTERVIEWERS)

Calgary Firms:

**Bennett Jones LLP
Interviews will be conducted at Bennett Jones LLP - Toronto, 34th floor, First Canadian Place
Interviewers: Laurie Goldbach and tbc

**Blake, Cassels & Graydon LLP
Interviews will be conducted at Blakes Toronto.
Interviewers: David Tupper and mark Morrison

Borden Ladner Gervais LLP
Interview location is to be determined.

Burnet, Duckworth & Palmer
Location: Crown Plaza Hotel, 225 Front St. W., Toronto (416) 597-1400

Fraser Milner Casgrain LLP
Interviews will be conducted at FMC Toronto.

**Gowling Lafleur Henderson LLP
Interviews will be conducted at Gowlings Toronto office.
Interviewers: Rob Housman and Kim Nutz

Macleod Dixon
Interviews will be conducted at Macleod Dixon Toronto

McCarthy Tétrault
Interviews will be conducted at McCarthy Tétrault Toronto.

**Osler, Hoskin & Harcourt LLP
Interviews will be conducted at Oslers Toronto.
Interviewers: Andrée Blais and Nancy Diep

Stikeman Elliott LLP
Interviews will be conducted at the Toronto office of Stikeman Elliott LLP

East Coast Firms:

Cox Hanson - Halifax
Interviews will take place at the University of Toronto, Faculty of Law
78 Queens Park (Museum Subway Station) room Fa4.

Stewart McKelvey Stirling Scales
Interviews will take place at the University of Toronto, Faculty of Law
78 Queens Park (Museum Subway Station) room FL 408

McInnes Cooper
Interviews will be conducted at the Toronto office of Osler Hoskin Harcourt.

Vancouver Firms:

**Alexander Holburn Beaudin & Lang
Interviews will be conducted at Cassels Brock & Blackwell Toronto
Interviewer: Peter Snell

**Blake, Cassels & Graydon LLP
Interviews will be conducted at Blakes Toronto, 2300, 199 Bay Street
Interviewers: Geoff Belsher and Chris Gear

Borden Ladner Gervais
Interviews will be conducted at BLG Toronto.

**Bull, Housser & Tupper
Interviews will be conducted at McMillan Binch, 200 Bay Street, Toronto.

Interviewers: Brian Taylor and Beth Allard, will be

Davis & Company
Interviews will be conducted at Davis & Company Toronto.

Farris, Vaughan, Wills & Murphy
Interview location Ivanhoe Cambridge
95 Wellington Street West
6th Floor Toronto, ON 416-360-4418.

*Fraser Milner Casgrain LLP
Interviews will be conduct at FMC Toronto.

**Lawson Lundell Lawson & McIntosh
Interviews will be conducted at Torys Toronto.
Interviewers: Rob Sider, John Christian and Amy Carruthers

McCarthy Tétrault
Interviews will be conducted at McCarthy Tétrault Toronto.

*FMC, Vancouver unexpectedly filled all of their 2004 summer positions.
Therefore, they are pulling out of the East/West recruitment.
**Firms interviewers are listed

RECRUITING 1st and 2nd LAW STUDENTS FOR SUMMER 2004 AND ARTICLING POSITIONS
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INTERVIEWS IN TORONTO ON NOVEMBER 13th & 14th , 2003

Selected candidates are invited to go to Toronto for their interview(s). Students are expected to make their own arrangements. Firms will interview off-site at affiliate offices in Toronto or at a downtown hotel.

There will be a reception for all students being interviewed at the University of Toronto, Faculty of Law on Thursday night, November 13th from 6 p.m. to 8 p.m. (Flavelle House, Flavelle Room, 78 Queen's Park). Selected candidates HAVE TO INFORM THE PLACEMENT OFFICE in order to have their nametag ready for the reception. I will see you there!

5) NOVEMBRE EN BREF!

Nov. 10: Information session for LL.M. students, 12:30, room 102
Nov. 10: Court of appeal for Ontario visit - CANCELLED!
Nov. 13-14: East/West interview days in Toronto
Nov. 14: MAG DAY (see no. 10)

6) BAR/BRI

Each year, Bar/Bri offers a course to help McGill students prepare for the NY Bar exams as well as the Multistate Professional Responsibility Exam required by the NY State Bar. If you are interested in doing the NY Bar, a table with registration materials and other information will be set up at the atrium every Monday and Wednesday from 11:30 -1:30.

Important deadline: November 15, 2003 - final deadline to pay all fees if you intend to take the bar course in winter 2004.

If you have any questions or concerns, please do not hesitate to contact Fatima Ahmad at fatima.ahmad@mail.mcgill.ca

7) IF YOU ARE LOOKING FOR AN ARTICLING POSITION AND ARE IN YOUR LAST YEAR OF STUDIES.

.here are a few suggestions:

. Au Québec: l'Ecole du Barreau du Québec a un Bureau de placement et affiche de nombreux postes sur son site intranet. Vous pourrez avoir accès à ces postes : www.ecole-dubarreau.qc.ca/stages/stagiaire.php

. In Ontario: Provided you have registered for the Ontario Bar Admission Course, you have access to career services through the Law Society. You should check the postings on: http://education.lsuc.on.ca.

. QUICKLAW-NAD (National Articling Directory): Quicklaw-NAD affiche les 'ARTICLING SURVEY' remplis par les cabinets/organisations pratiquant surtout le Common Law. Vous pouvez les consulter électroniquement. Les cabinets qui ont encore des stages à offrir en 2004-2005 doivent l'indiquer sur ledit formulaire.

A titre d'exemples, les cabinets suivants.et bien d'autres - cherchent toujours des stagiaires pour 2004-2005 :
- McDougall Gauley, Saskatoon, www.mcdougallgauley.com
- Harvey Katz Law Office, Hamilton, ON, www.hjklaw.on.ca
- Davidson & Company, Vernon, www.davidsonlaw.com
- Morelli Chertkow, Kamloops, www.morel-lichertkow.com
- Bellmore & Moore, Toronto, website under construction (416-581-1818)
- Cawood Walker Demmans Baldwin, North Battleford, SK, www3.sk.sympatico.ca/cawood

. Nos collègues de Osgoode ont produit un recueil de stages en Common Law (2004-2005) regroupant l'information fournie par Quicklaw-Nad et ayant le mérite d'être facile à consulter. Il est disponible pour consultation au Service de placement.

. Résumé Programme : Vous pouvez me soumettre votre candidature (CV et relevé de notes) et le Service de Placement l'enverra aux petits et moyens cabinets de Montréal et de Toronto. Apportez-moi un CV (et relevés de notes) par ville et identifiez la ville sur un post-it (Montréal et/ou Toronto). Nous nous occuperons du reste! Deadline : Wed., Dec. 4, 2003.

Je vous invite à venir me rencontrer (si ce n'est déjà fait) afin de discuter de votre situation et de stratégie.

8) LL.M. INFORMATION SESSION - UPDATE!

Do not forget the information session scheduled on Monday, Nov. 10, 12:30 in room 102.

I will talk about:

-Bar requirements
-Equivalency programs
-Recruitment & application documents
-Services offered by the CPO
-Careers Days
-Etc.

Prepare your questions!

9) PUBLIC INTEREST DAY - TORONTO

Osgoode and UofT are organizing a Public Interest Day on Friday, March 12 open to all law students. Location: MAG, 900 Bay St., Macdonald Block. Student will have to register on-line. I will keep you posted on the registration procedure and on the agenda/list of participants in the weeks to come.

10) MAG DAY 2003

**Reminder: MAG Day is fast approaching (Nov 14th). The on-line form is available until 5 p.m. Monday Nov 10th.

To register: http://www.attorneygeneral.jus.gov.on.ca/english/about/artcl/magdayform.asp

The MAG is hosting its second annual MAG Day on Friday, November 14, 2003. This day has been developed to provide law students with an opportunity to learn about the numerous career opportunities the ministry has to offer. Students will have the opportunity to meet and talk with government lawyers from diverse practice areas. Students will also participate in a number of panel discussions covering substantive areas of the law, the interview/application processes, and the articling experience.

Time: 11 am to 5 pm
Place: MAG, Macdonald Block, 900 Bay St. (at Wellesley)
Ontario Room

For a detailed agenda and to register, please consult their website: www.attorneygeneral.jus.gov.on.ca/english/about/artcl/magdayform.asp

Register quickly as space is limited! On-line registration will close at 5 pm on Monday, November 10th.

For information, contact Teresa Santamaria:

teresa.santamaria@jus.gov.on.ca or (416) 326-2449.

11) LEGAL HANDBOOK & INTERNATIONAL HANDBOOK - available at the CPO!

The 6th edition of the Legal Employment Handbook is available at the CPO! Every student is entitled to his or her own copy. It features great testimonials from students and alumni from all over Canada and the U.S. and listings of firms and organizations by city. Free of charge.

Ready to Go? Your Guide to Your Career in International Law, co-published with the UdeM, is also available at the CPO. It features sections on careers at the UN, in international organizations, in NGOs, in private practice, in-house practice and in academia. It also features many testimonials from alumni in different areas of the law.
Price: $5.

12) WEB: Transition to CareerLink!

The CPO is currently phasing in the CareerLink portion of its website in order to replace the CPO Newsletter. Until further notice, the Newsletter is still the official source of information. Please check: www.law.mcgill.ca/cpo/, click on CareerLink and log in.

Brigitte St-Laurent
Director
Career Placement Office

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For more information, please contact the Career Placement Office by e-mail: brigitte.st-laurent@mcgill.ca placement.law@mcgill.ca or by telephone: (514) 398-6618 / 398-6159.

All recent editions of the CPO Newsletter are saved on its website: http://www.law.mcgill.ca/cpo/careerlink-en.htm

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Lawyer Joke of the Week (#1)

Two police officers extracted a confession from a suspect by advising him the Xerox machine was a lie detector. First they put a colander - a salad strainer - over his head and wired it to the duplicating machine. Then, under the Xerox lid they placed a slip of paper reading "He Is Lying!" Every time the suspect answered a question, an officer would press the duplicating button and out would pop a Xeroxed "He Is Lying!" Finally shaken, the suspect told all. Hi confession was thrown out by a judge who was not amused.
- from Disorderly Conduct : Verbatim Excerpts from Actual Court Cases

Lawyer Joke of the Week (#2)

Arguing with a lawyer is like mud wrestling with a pig: After a while you realize that the pig actually enjoys it.

Submit your lawyer jokes to the Quid!
quid.law@mcgill.ca

Check out archives at
http://www.law.mcgill.ca/quid